

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

DEC 10 2019

Clerk, U.S. District Court
District Of Montana
Missoula

WAYNE A. HUSSAR, II,

Petitioner,

vs.

JAMES P. REYNOLDS,

Respondent.

CV 19-78-H-DLC-JTM

ORDER

On November 20, 2019 United States Magistrate Judge John T. Johnston entered his Order and Findings and Recommendation. (Doc. 4.) Judge Johnston recommended dismissing Hussar's petition. (Doc. 4 at 4.) Hussar does not object, and therefore the Court will review for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).


Hussar's petition asks the Court to review a decision by the Montana Supreme Court denying his request for an untimely appeal. (Doc. 1.) Judge Johnston recommended dismissing the petition because federal district courts do not serve as appellate tribunals to review errors allegedly committed by state courts. (Doc. 4 at 3 (citing *MacKay v. Pfeil*, 827 F.2d 540, 543 (9th Cir. 1987).)

There is no clear error in Judge Johnston's determination that Hussar requests relief that this court lacks jurisdiction to provide. Because jurists of reason could not disagree with the Court's conclusion, the certificate of appealability is denied.

IT IS ORDERED that the Order and Findings and Recommendation (Doc. 4) is ADOPTED in full.

1. Hussar's Petition (Doc. 1) is DISMISSED.
2. The Clerk of Court is directed to enter a judgment in favor of Respondents and against Petitioner.

DATED this 10th day of December, 2019.



Dana L. Christensen, Chief Judge
United States District Court